

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
DAVID M. GLOVER, JUDGE

DIVISION I

CACR06-962

May 2, 2007

JACK WAYNE TEAGUE
APPELLANT
V.
STATE OF ARKANSAS
APPELLEE

APPEAL FROM THE CRAWFORD
COUNTY CIRCUIT COURT
[CR2005-387 I]

HONORABLE GARY R. COTTRELL,
JUDGE

AFFIRMED

Appellant, Jack Teague, was tried by a jury and found guilty of the offense of manufacturing marijuana. He was sentenced as a habitual offender to three years' imprisonment. He raises two points of appeal: 1) the trial court erred in denying his motion for a directed verdict because the evidence was not sufficient to show that he manufactured marijuana; 2) the trial court erred in denying his requested jury instruction that possession is a lesser-included offense of manufacturing marijuana. We affirm.

On August 2, 2005, during an aerial-detection flight, United States Forestry Service personnel spotted marijuana growing near appellant's residence. They alerted local law enforcement officers, who then went to appellant's house. When appellant was approached by the officers, he admitted that the plants were his and stated that he used them for medicinal purposes. He was placed under arrest and his premises were searched

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after a search warrant was obtained. Seventy-seven marijuana plants were confiscated from the area in which they were growing near his residence.

For his first point of appeal, appellant contends that the trial court erred in denying his motion for a directed verdict because the evidence was not sufficient to show that he manufactured marijuana. A directed-verdict motion is a challenge to the sufficiency of the evidence. *May v. State*, 94 Ark. App. 202 , ____ S.W.3d ____ (2006). When the sufficiency of the evidence is challenged on appeal from a criminal conviction, we review the evidence and all reasonable inferences in the light most favorable to the State and will affirm if the finding of guilt is supported by substantial evidence. *Id.* Substantial evidence is evidence of sufficient certainty and precision to compel a conclusion one way or another that passes beyond mere speculation or conjecture. *Id.*

Appellant was charged with the offense of manufacture of marijuana. In making his sufficiency argument, he relies upon his own testimony that he just “threw the seeds out” into his yard and watered them with other plants in his garden. He contends that such evidence was not sufficient to establish that he manufactured marijuana. We disagree.

“Manufacture” is defined as “the *production*, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from a substance of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis.” Ark. Code

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Ann. § 5-64-101(16)(A) (Repl. 2005) (emphasis added). “‘Production’ includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance[.]” Ark. Code Ann. § 5-64-101(22) (Repl. 2005).

Here, appellant told the officers when they first arrived on his property that the plants were his and that he was growing them for medicinal purposes. The subsequent testing of the recovered plants established that they were indeed marijuana. We hold that there was substantial evidence to support his conviction and that the trial court did not err in denying his motion for a directed verdict.

For his remaining point of appeal, appellant contends that the trial court erred in denying his request for a jury instruction on simple possession. He contends that it was error to deny the requested instruction because possession is a lesser-included offense of manufacture. We find no error.

Arkansas Code Annotated section 5-1-110(c) (Repl. 2005) provides, “The court is not obligated to charge the jury with respect to an included offense unless there is a rational basis for a verdict acquitting the defendant of the offense charged and convicting him or her of the included offense.” In *Stultz v. State*, 20 Ark. App. 90, 91, 724 S.W.2d 189, 190 (1987), this court explained:

Where there is no evidence tending to disprove one of the elements of the larger offense, the trial court is not required to give an instruction on a lesser included offense. If, after viewing the facts in the light most favorable to appellant, no rational basis for a verdict acquitting him of the greater offense and convicting

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him of the lesser one can be found, it is not error for the trial court to refuse to give an instruction on the lesser included offense.

(Citations omitted.)

As discussed previously, appellant acknowledged that the plants were his and that he was growing them for medicinal purposes. The growing of marijuana plants alone supports the offense of manufacturing it. The fact that appellant may have been doing so for medicinal purposes makes no difference whatsoever under the law. Consequently, upon the facts of this case, there is no rational basis for a verdict acquitting appellant of the offense of manufacturing marijuana, and the trial court did not err in refusing the requested instruction.

Affirmed.

ROBBINS and HEFFLEY, JJ., agree.